

VIRGIN ISLANDS

COMPANY MANAGEMENT (AMENDMENT) ACT, 2010

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 2 amended.
3. Section 4 amended
4. Section 4A repealed and replaced.
5. Section 6 amended.
6. Section 7 amended.
7. Section 9A inserted.
8. Section 11 amended.
9. Section 13 amended.
10. Section 17 amended.
11. Section 17C amended.
12. Section 19A inserted.
13. Section 26 amended.
14. Section 29 added.

I Assent

(Sgd.) V. Inez Archibald
Acting Governor
18th November, 2010

VIRGIN ISLANDS

No. 9 of 2010

An Act to amend the Company Management Act, 1990 and provide for other matters connected therewith.

[Gazetted 16th December, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title. 1. This Act may be cited as the Company Management (Amendment) Act, 2010.
- Section 2 amended. 2. Section 2 of the Company Management Act, 1990 (hereinafter referred to as “the principal Act”) is amended
- (a) in the definition of “approved form”, by deleting the words “section 50A” and replacing them with the words “section 41B”;
 - (b) by deleting the definition of “auditor” and replacing it with the following new definition:
 - ““auditor” means a person who
 - (a) is qualified to act as an auditor of a licensee in accordance with section 56 of the Regulatory Code, 2009; and
 - (b) is in good standing with respect to that qualification;”;

(c) in the definition of “significant interest” by deleting the words “five per cent” in paragraphs (a), (b) and (c) and respectively replacing them with the words “ten per cent”;

(d) by inserting immediately after the definition of “company management business”, the following definition:

““controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee by a person of

(a) more than fifty per cent of the voting rights of the licensee; or

(b) a significant interest in the licensee which, although not constituting more than fifty per cent of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;”;

(e) by deleting the definition of “Virgin Islands company” and replacing it with the following new definition:

““Virgin Islands company” means a company that is incorporated, continued or re-registered under the BVI Business Companies Act, 2004.”.

Section 4 amended.

3. Section 4 of the principal Act is amended

(a) in subsection (3) by deleting the words “Commission’s fit and proper criteria” in paragraph (b) and replacing them with the words “fit and proper criteria prescribed”; and

(b) by inserting after subsection (3), the following new subsections:

“(3A) There may be listed in a schedule to the application for a company management licence the name of any company engaging in company management business, being a subsidiary of the company applying for a company management licence, together with a description of the particular type of company management business to be carried on by the subsidiary and, the Commission, upon granting the company management licence to the applicant company, shall include in the licence the name of each subsidiary to be included in the licence together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary.

(3B) A licensee that wishes to add a subsidiary to, or remove a subsidiary from, its licence may apply to the Commission in the approved

form and shall, upon approval of the application, submit its licence to the Commission for the necessary amendment to be made.”.

Section 4A repealed and replaced.

4. Section 4A of the principal Act is repealed and replaced with the following new section:

“Fees. 4A. Regulations made under section 62 of the Financial No. 12 Services Commission Act, 2001 may provide for the fees of 2001 chargeable and payable under this Act.”.

Section 6 amended.

5. Section 6 of the principal Act is amended by inserting after the word “suspended”, the words “, cancelled”.

Section 7 amended.

6. Section 7 of the principal Act is amended in subsection (2) by inserting after the words “a company licensed”, the words “as a Class I or Class III trust licensee”.

Section 9A inserted.

7. The principal Act is amended by inserting after section 9, the following new section:

“Principal office and authorised agent.

9A. (1) A licence shall not be granted to any person unless the person designates, and notifies to the Commission,

(a) a principal office in the Virgin Islands; and

(b) by name, two individuals resident in the Virgin Islands approved by the Commission to be that person’s authorised agents.

(2) The functions of an authorised agent are to act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorised agent to act, the other authorised agent may carry out the functions of both authorised agents under this subsection.

(3) A licensee shall obtain the prior written approval of the Commission for any change of

(a) its principal office in the Virgin Islands; and

(b) any of the persons designated as an authorised agent pursuant to subsection (1) (b).

(4) Where the Commission has approved a person under subsection (1) (b) or (3) (b) as an authorised agent, it may in

writing revoke the approval.

(5) A licensee who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.”

Section 11
amended.

8. Section 11 of the principal Act is amended by deleting the full stop and adding at the end of the sentence the words “, including at the head office and every branch of the licensee.”.

Section 13
amended.

9. Section 13 of the principal Act is amended

(a) in subsection (1) by inserting after the words “significant interest”, the words “or controlling interest”;

(b) in subsection (5) by deleting the words “Commission’s fit and proper criteria” in paragraph (b) and replacing them with the words “fit and proper criteria prescribed”; and

(c) by adding after subsection (7), the following new subsections:

“(8) Without prejudice to subsection (7), where a person acquires, sells, transfers, charges or otherwise disposes of a significant interest or controlling interest in a licensee contrary to any requirement of this section, the Commission may,

(a) in the case of an acquisition, require the licensee to rescind the acquisition, notwithstanding anything to the contrary that may be contained in the licensee’s constitutional documents or contractual arrangements;

(b) in the case of a sale, transfer, charge or other disposition, require the person to

(i) rescind or reverse the sale, transfer, charge or other disposition;

(ii) modify the sale, transfer, charge or other disposition in such manner as the Commission may direct; or

(iii) suspend or rescind any activity that is contingent on the sale, transfer, charge or other disposition until otherwise advised by the Commission.

(9) No liability consequent upon a decision taken by the Commission under subsection (8) shall arise in respect of the Commission or, subject to subsection (7), of a licensee or other person acting on the directive of the Commission.

(10) No action taken by the Commission under subsection (8) shall be construed as a bar to a licensee or other person seeking approval under this section for the acquisition, sale, transfer, charge or other disposition of a significant interest or controlling interest.”.

Section 17 amended.

10. Section 17 of the principal Act is amended by repealing subsection (2) and replacing it with the following new subsection:

“(2) A licensee shall retain all financial records for a period of at least five years after the termination of the business relationship to which they relate and, for the purpose of this subsection, “business relationship” shall be construed in accordance with the definition of that term in the Anti-money Laundering Regulations, 2008.”.

Section 17C amended.

11. Section 17C of the principal Act is amended in subsection (1) by adding at the end of paragraph (a) before the semi-colon, the words “attesting to the matters outlined in section 17B (3) and (4)”.

Section 19A inserted.

12. The principal Act is amended by inserting after section 19, the following new sections:

“Power to restrict issuing of licence.

19A. (1) The Commission may restrict the issuing of a licence under this Act to any particular person or classes of person.

(2) In exercising the power conferred under subsection (1), the Commission shall consider the following matters:

- (a) the size of the market for which company management business is relevant;
- (b) whether the person applying for a licence is a believer of, or resident in, the Virgin Islands; and
- (c) whether the person applying for the licence intends to carry on company management business either alone or jointly with a person who is not a believer of, or resident in, the Virgin Islands.

(3) For the purposes of subsection (2) (b) and (c), a person is considered to

- (a) be a believer of the Virgin Islands if he so qualifies by virtue of section 2 (2) of the Virgin Islands Constitution Order 2007; and

- (b) be resident in the Virgin Islands if he has resided in the Virgin Islands continuously for a period of not less than ten years.”

“Vesting provisions.

19B. (1) For the purposes of this section, the term “operations” refers to any activity of a licensee which the licensee engages in as part of its normal business.

(2) A licensee shall not sell, transfer or otherwise dispose of any of its operations, unless it notifies, and obtains the approval of, the Commission.

(3) Where a licensee sells, transfers or otherwise disposes any of its operations, it shall

- (a) enter into a written agreement with the person to whom the operations are sold, transferred or otherwise disposed, setting out the terms and conditions (if any) of the sale, transfer or disposal; and

(b) ensure that the agreement specifies

- (i) the type and nature of the operations and whether the sale, transfer or disposition relates to the whole or only a part of the operations;

- (ii) the rights and liabilities that arise in relation to the sale, transfer or disposition of the operations;

(iii) in the case of a transfer, whether

- (aa) the transfer is conditional upon a specified event or situation occurring or arising, or not occurring or arising; and

- (bb) a breach of the condition re-vests the operations to the licensee and what consequences, if any, arise from the breach;

- (iv) how any powers, provisions and liabilities in respect of the operations are to be exercisable or have effect;
- (v) how any subsisting rights and interests of third parties in relation to the operations are to be preserved or effected without adversely affecting those third parties; and
- (vi) any other matter that, having regard to the operation and its nature and scope, it is reasonable to provide for.

(4) An agreement under subsection (2) may provide

- (a) that any other agreement made or other thing done by or in relation to the licensee to be treated as made or done by or in relation to the person to whom the operations are sold, transferred or otherwise disposed; and
- (b) for continuity of contracts of employment from the licensee to the person to whom the operations are sold, transferred or otherwise disposed, subject to the provisions of the Labour Code.

(5) Where the sale, transfer or disposition of the operations

- (a) comply with the requirements outlined in subsections (2) and (3), the rights and liabilities consequent upon the sale, transfer or disposition shall vest in the person to whom the operations are sold, transferred or otherwise disposed;
- (b) fail to comply with the requirements outlined in subsections (2) and (3), any sale, transfer or disposition or purported sale, transfer or disposition of the operations shall be void.”.

Section 26 amended.

13. Section 26 of the principal Act is amended by deleting the words “Governor in Council” and replacing them with the word “Cabinet”.

Section 29 added.

14. The principal Act is amended by adding after section 28, the following new section:

“Transitional provision.

29. (1) For the purposes of this section, “an existing licensee” means a licensee who is the holder of a valid licence under this Act prior to the coming into force of this section.

(2) An existing licensee shall, within six months of the coming into force of this section, comply with the requirements of section 9A.

(3) Where an existing licensee fails to comply with the requirements of section 9A within the period specified in subsection (2), it shall be liable to a penalty of five hundred dollars within the first thirty days after the contravention occurred, and thereafter to a penalty of two hundred dollars for each month or part thereof during which the contravention continues.

(4) A penalty due and payable under subsection (3) may be recovered by the Commission by instituting legal proceedings in the Magistrate’s Court.”

Passed by the House of Assembly this 4th day of November , 2010.

(Sgd.)ROY HARRIGAN,
Speaker

(Sgd.)JOANN HODGE,
Ag. Deputy Clerk of the House of Assembly